MORTGAGES — PRIORITIES — RIGHT OF JUNIOR MORTGAGEE TO RENTS AND PROFITS. — The plaintiff, a junior mortgagee, in an action to foreclose, had a receiver appointed to collect the rents and profits of the mortgaged premises. Later a prior mortgagee had the receivership extended to cover his foreclosure action, and asked that the rents and profits previously collected be applied in repairs and taxes. *Held*, that they need not be so applied, but belong to the plaintiff. *Madison Trust Co.* v. *Axt*, 130 N. Y. Supp. 371 (App. Div.).

The junior mortgagee takes by this decision merely what the mortgagor would have taken if left in possession. See JONES, MORTGAGES, § 667. As respects his immediate predecessor in line he is himself practically a mortgagor, as his claim rests entirely upon what that predecessor left to the mortgagor. See 1 HARV. L. REV. 55, 62. Accordingly he should be accountable to subsequent but not to prior encumbrancers for his collections. *Leeds* v. *Gifford*, 41 N. J. Eq. 464. *Contra*, *Holabird* v. *Burr*, 17 Conn. 556. Each prior mortgagee has the right to dispossess those behind him, but until he does so he has no right to the rents and profits. *Sanders* v. *Lord Lisle*, Ir. Rep. 4 Eq. 43. A Virginia case has held that a receiver must act in the interest of all parties and pay the various claimants according to their priorities, even though appointed on the application of a junior mortgagee alone. *Beverley* v. *Brooke*, 4 Grat. (Va.) 187. It seems fairer to give the junior encumbrancer the reward of his diligence. *Ranney* v. *Peyser*, 83 N. Y. 1. A receiver appointed at his instance ought, as in the principal case, to collect for his benefit alone, until the prior encumbrancer takes possession himself or has the receivership extended to cover his suit. *Howell* v. *Ripley*, 10 Paige (N. Y.) 43; *Washington Life Ins. Co.* v. *Fleischauer*, 10 Hun (N. Y.) 117.

PUBLIC SERVICE COMPANIES — REGULATION OF PUBLIC SERVICE COMPANIES — VALUATION OF WATER RIGHTS AND FRANCHISE AS BASIS FOR DETERMINING RATES. — A state statute required a board of supervisors to fix maximum water rates to be charged by irrigation companies, upon the basis of the value of the property used in the appropriation and furnishing of water. *Held*, (a) that a water right is not a property right upon which the plaintiff company is entitled to an income; (b) that the company's franchise is to be valued as a basis for returns. *San Joaquin & Kings River Canal & Irrigation Co.* v. *County of Stanislaus*, Circ. Ct., N. D. Cal. See NOTES, p. 173.

RECORDING AND REGISTRY LAWS — NOTICE BY RECORD — DELIVERY OF MORTGAGE TO RECORDING CLERK AS CONSTRUCTIVE NOTICE. — A chattel mortgage was not recorded until a month after it was mailed to the county clerk. After the clerk received the mortgage but before he recorded it, the defendant purchased the chattel in good faith. *Held*, that his title cannot be defeated by the mortgagee. *Bamberg* v. *Harrison*, 71 S. E. 1086 (S. C.).

By many statutes, delivery of a mortgage for record to the proper official constitutes constructive notice. *Throckmorton* v. *Price*, 28 Tex. 605; *Zeiner* v. *Edgar Zinc Co.*, 79 Kan. 406, 99 Pac. 614. Generally, even without an affirmative provision, the purchaser is charged with notice after such delivery. *Appleton Mill Co.* v. *Warder*, 42 Minn. 117, 43 N. W. 791. See *Parker* v. *Palmer*, 13 R. I. 359, 363. This view — that the mortgagee, having done all reasonably to be required of him, should not suffer from the clerk's remissness — is aided by decisions that recording protects the mortgagee although the record is destroyed. *Shannon* v. *Hall*, 72 Ill. 354; *Marlet* v. *Hinman*, 77 Wis. 136, 45 N. W. 953. Opposing decisions reason that the mortgagee occupies a better position for verifying the record than the purchaser. *State ex rel. Slocomb* v. *Rogillio*, 30 La. Ann. 833. *Cf. Terrell* v. *Andrew County*, 44 Mo. 309. And if

recording is constructive notice because examination of the records would give actual notice, the purchaser should be able to rely upon them safely. *Lessee of Jennings* v. *Wood*, 20 Oh. 261. Many statutes, however, like the one in the principal case, make mortgages recorded within a specified time valid against purchasers although the purchase is within that time. CODE OF S. C., 1902, § 2456. Such statutes seem to prescribe the diligence necessary on the part of the mortgagee and to be complied with sufficiently by deposit of the mortgage for record. The principal case, however, follows the settled rule in its jurisdiction. *Burriss* v. *Owen*, 76 S. C. 481, 57 S. E. 542.

RIGHT OF PRIVACY — INFRINGEMENT OF THE RIGHT — PUBLICATION OF PORTRAIT IN NEWSPAPER. — The defendant newspaper published a picture of the plaintiff without her consent in connection with an article concerning charges of crime against her father. *Held*, that the plaintiff cannot recover. *Hillman* v. *Star Pub. Co.*, 117 Pac. 594 (Wash.).

The case swings the numerical weight of American authority against recognition of the right of privacy in absence of statute. For a recent case *contra*, see 24 HARV. L. REV. 680; for a discussion of the principles involved, see 4 HARV. L. REV. 193.

STATUTE OF FRAUDS — PART PERFORMANCE — ACCEPTANCE OF RENT AS RATIFICATION OF LEASE. — The petitioner's agent, without the written authority required by statute, made a written lease of the petitioner's premises to the defendant for five years. The defendant took possession under the lease and the petitioner for two years accepted the rents when due. *Held*, that the petitioner cannot oust the defendant on thirty days' notice. *Matter of Di Marti*, 72 N. Y. Misc. 148 (Sup. Ct.).

Apart from any element of equitable estoppel, the ratification by a principal of a contract for lease of lands made by his agent must be in writing, when the statute provides that such agent must be appointed in writing. *Long* v. *Poth*, 16 N. Y. Misc. 85, 37 N. Y. Supp. 670. *Cf. Johnson* v. *Fecht*, 185 Mo. 335, 83 S. W. 1077. But *cf. Hammond* v. *Hannin*, 21 Mich. 374. However, part performance under a lease invalid under the statute may be sufficient ground for preventing the lessor from setting up the statute. *Gibbs* v. *Horton Ice Cream Co.*, 61 N. Y. App. Div. 621, 71 N. Y. Supp. 193. Taking possession and paying rent has been held sufficient. *Trammell* v. *Craddock*, 100 Ala. 266, 13 So. 911; *Walsh* v. *Rundlette*, 9 D. C. 114. But in the principal case it is not shown that the tenant has not received full value by use and occupation for the rent paid. Thus it would seem that part performance must here rest upon possession alone. *Contra*, *Eaton* v. *Whitaker*, 18 Conn. 222. But, it is submitted, mere possession should not be sufficient ground for disregarding the statute unless dispossessing the lessee would impose irreparable hardship upon him. *Henley* v. *Cottrell Real Estate, etc. Co.*, 101 Va. 70, 43 S. E. 191. See *Miller* v. *Ball*, 64 N. Y. 286, 292. But *cf. Cooper* v. *Newton*, 68 Ark. 150, 157, 56 S. W. 867, 870. As it is not shown that such hardship would accrue in the principal case, the lease should not be taken out of the statute. See 22 HARV. L. REV. 384; 20 HARV. L. REV. 335. However, if the rent was payable at a yearly rate, the decision would be correct, as a tenancy from year to year would have been established. *Coudert* v. *Cohn*, 118 N. Y. 309, 23 N. E. 298. *Cf. Julian* v. *Berardini*, 49 N. Y. Misc. 119, 96 N. Y. Supp. 1064.

TAXATION — PROPERTY SUBJECT TO TAXATION — DOWER NOT SUBJECT TO INHERITANCE TAX. — A suit was brought to collect an inheritance tax upon the defendant's dower under a statute taxing all property passing "under the intestate laws." *Held*, that dower is not subject to the tax. *Crenshaw* v. *Moore*, 137 S. W. 924 (Tenn.). See NOTES, p. 181.